

THE DUAL-USE EXPORT CONTROL PROGRAM

Y 4. B 22/3: S. HRG. 104-272

The Dual-Use Export Control Program... RING

BEFORE THE

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1995b
SUBCOMMITTEE ON INTERNATIONAL FINANCE

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

ON

THE APPLICATIONS TO EXPORT SENSITIVE TECHNOLOGIES TO FOREIGN NATIONS TO PREVENT THE PROLIFERATION OF DANGEROUS WEAPONS AND CHEMICALS OF MASS DESTRUCTION TO RECEIVE THOROUGH REVIEW BY ALL RELEVANT GOVERNMENT AGENCIES AND TO PREVENT UNNECESSARY DELAYS TO U.S. COMPANIES THAT PRODUCE COMMERCIAL GOODS BY STREAMLINING FEDERAL REGULATIONS

SEPTEMBER 21, 1995

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



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THE DUAL-USE EXPORT CONTROL PROGRAM

THURSDAY, SEPTEMBER 21, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SUBCOMMITTEE ON INTERNATIONAL FINANCE,
Washington, DC.

The Subcommittee met at 10:05 a.m., in room 538 of the Dirksen Senate Office Building, Senator Christopher S. Bond (Chairman of the Subcommittee) presiding.

OPENING STATEMENT OF SENATOR CHRISTOPHER S. BOND

Senator BOND. The hearing of the Senate Banking Committee, Subcommittee on International Finance, will come to order.

I would like to invite our witnesses to come forward as we offer our opening statements.

I want to extend a special thanks to Secretary Reinsch and Assistant Secretary McNamara for being with us today to talk about the issue of export controls.

I gather Mr. Sullivan is here as a substitute.

I have a statement from the Chairman of the Full Committee, Senator D'Amato, that will be made part of the record.

This is rather complex and arcane, but a very important issue that we're addressing today.

The function of the Dual-Use Export Control Program is very important to this Subcommittee and to me in particular because I also have the privilege of chairing the Small Business Committee. Export controls impact the entire exporting community, but they are felt most keenly by the many small companies for whom the cost of compliance is high. These are the very companies who have led the U.S. export growth in recent years. Therefore, I want to make sure that the regulatory burden of export controls is as low as possible.

At the same time, I want to emphasize that an effective and efficient export control system is vitally important to this country's national security.

The fall of the Berlin Wall and the collapse of the Soviet Union fundamentally changed the world, and altered the very foundation on which our export control system and our entire national security apparatus are based.

However, the Gulf War, nuclear smuggling, disclosure about Iraq's pre-war biological weapons programs, chemical attacks in Tokyo, and Iran's nuclear ambitions should be ample evidence that, while the world has changed dramatically, serious threats to our security still exist. The question is how our export control laws are

addressing these threats. Maybe the appropriate question is, are export controls still an effective tool to address the threat of weapons proliferation?

Some have argued that these controls may not be a critical part of our counterproliferation policy. Others believe that export controls are so important that they should be tightened significantly. Presumably, the Administration has carefully considered this question and will be able to tell us what is the proper role of export controls in helping to prevent the spread of dangerous technologies.

Another issue we want to cover today is the status of negotiations to create a successor regime to COCOM. We're anxious to hear the details of the agreement reached in June by the United States and Russia that paved the way for Russia's participation in the successor regime. Specifically, what did Russia agree to in regard to their sales of conventional weapons to Iran? Will Russia continue to sell nuclear technology to Iran? How will the United States deal with this problem?

Also of interest to the Subcommittee are details regarding the new regime that the United States agreed to at a high level meeting early this month. I think everyone would agree that this new regime should not be a paper tiger.

Personally, I would like to hear what the goals of the regime are and how the goals are going to be reached. This is a very important question to us since the new regime will be our primary means of dealing multilaterally with the proliferation of sensitive, dual-use goods and conventional weapons to countries that don't abide by national norms of behavior. As I have said, we need an export control system that is both effective and efficient. It's crucial that applications to export sensitive technologies receive a thorough review by all relevant Government agencies.

I understand there's an Executive Order on license application processing that is close to being issued, and will deal with criticism that agencies are not getting to see license applications that concern them.

It is also important that the review of export license applications not drag on for months while foreign competitors chip away at U.S. market share. I specifically want to hear what you're doing to make sure that export licensing does not involve unnecessary delays for our exporting companies.

A related issue is the fact that the EAA has expired, and you're operating under emergency authority. I would like to hear what problems, if any, this has presented for administering the export control program.

It is the task of this Subcommittee to write a new Export Administration Act. We are following very closely the efforts in the House to come up with a compromise bill.

We have asked you to comment on the bill that was unanimously approved by the Senate Banking Committee last year. Your comments should be a great help to the Subcommittee to move as quickly as possible on EAA legislation should the House succeed in passing its own bill.

Finally, some recent press reports have raised questions about the internal process by which the Administration formulates export

control policy. I will have some questions for our witnesses on this one.

Now I would like to turn to my Ranking Member, Senator Boxer. Senator Boxer, good morning.

OPENING STATEMENT OF SENATOR BARBARA BOXER

Senator BOXER. Good morning, and thank you so much, Mr. Chairman, for calling this hearing. I have some very brief remarks.

This is a very important hearing because the Dual-Use Export Control Program and reauthorization of the EAA is highly important, I think, to this country and most particularly to the State of California. One of the most important issues is export controls on encryption technology.

On the one hand, we must be mindful and protective of our national security interest. On the other hand, however, we have a computer software industry which is recognized as the best in the world but is becoming increasingly hindered in its ability to compete effectively internationally.

Currently, the U.S. software industry holds about 75 percent of the world's packaged software market known as shrinkwrap market. I do not think there is any other U.S. industry that holds such a dominant share of the world market.

This U.S. competitive advantage is especially important as we move forward into the 21st century and our industries and workers are increasingly forced to compete in the global marketplace. The few remaining domestic industries which do hold a global advantage need to be promoted and encouraged in every respect, not stymied. This is particularly significant in light of the huge trade deficit that the U.S. continues to amass with our international trading partners.

Another important part of this issue is the trend toward digital communication. Such digital communication has many advantages. It saves time, it's more efficient, and it effectively enables individuals to conduct cross-border transactions domestically and internationally. However, there needs to be the ability to safeguard one's privacy by encrypting those communications. We communicate electronically or digitally through our personal computers, fax machines, on the Internet, on the telephone, and at the bank.

It seems to me, therefore, that we need to be concerned about the privacy of individuals using this technology, particularly as it relates to financial transactions. Now these issues are complicated. They're arcane in some cases. They're hard to follow. They're complex, as my Chairman has said. But it is crucial, both to the national security interests of our Nation and to the very strong and important competitiveness interests of our Nation, that we resolve these problems.

I am very pleased to be here today and I look forward to hearing from you and asking you some questions.

Thank you, Mr. Chairman.

Senator BOND. Thank you, Senator Boxer.

We would like to welcome our witnesses today, and first I will call on a gentleman we have known on the other side—oh, excuse me. Senator Murray's come in. Excuse me.

OPENING STATEMENT OF SENATOR PATTY MURRAY

Senator MURRAY. Thank you, Mr. Chairman.

I do have a quick opening statement.

I am very pleased that we are discussing the Export Administration Act today, and I look forward to hearing from today's witnesses.

As you know, Mr. Chairman, I am highly interested in the issue of export controls, and I was very optimistic about reauthorizing an updated Export Administration Act in the last Congress. But unfortunately, we are still working toward that end. I want to reassure you that I intend to remain vigilant on this issue.

The issues surrounding export controls are very contentious and difficult. For years, we have debated the level of technology that we can and should export, and both sides of the issue have legitimate reasons why we should or should not be able to export certain technology. Unfortunately, while we continue to debate this issue, our computer, high tech, and aerospace industries are losing billions of dollars in potential sales.

Mr. Chairman, my home State is heavily dependent on exports. One out of every five jobs in the State of Washington is trade-related. If our economy is to continue to provide family wage, highly-skilled jobs, we need to reauthorize and reform the Export Administration Act.

That's why I introduced a bill in Congress last year that made it easier for U.S. companies to export commercial goods and technology by streamlining Federal regulations. We must eliminate the excessive red tape that burdens our exporters. Our national security controls should target those items that really should be controlled to prevent the proliferation of weapons of mass destruction, and we should focus on bringing this Act into the post-Cold War world.

I look forward to hearing testimony from today's witnesses on the progress that the Administration is making in its encryption policy, it's efforts to pull together the post-COCOM or the so-called New Forum and its recent decision to loosen the export controls on supercomputers.

Thank you, Mr. Chairman.

Senator BOND. Thank you, Senator Murray.

Now, a gentleman who has served on this side of the table and has the unvarnished pleasure of serving on the other side of the table. We would like to welcome William A. Reinsch, Under Secretary for Export Administration in the Bureau of Export Administration, Department of Commerce.

Secretary Reinsch.

OPENING STATEMENT OF WILLIAM A. REINSCH UNDER SECRETARY FOR EXPORT ADMINISTRATION BUREAU OF EXPORT ADMINISTRATION U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC

Mr. REINSCH. Thank you very much, Mr. Chairman, Senator Boxer, Senator Murray.

I am glad to be back. All things considered, I think I would rather be on the other side of the table but it's a pleasure to be back and have an opportunity to discuss these issues with you.

I think collectively the three of us are prepared to respond to all of the issues that Senator Bond raised, and of course we'll be glad to answer any questions you might have after that.

The Cold War, as long and costly as it was, had a certain elegant simplicity to it. The United States and its allies had a clearly identified enemy, and we largely agreed on how it should be contained. Our strategy worked. We contained and eventually overcame the Soviet threat through multilateral cooperation.

Today we face more complicated problems. We face complex threats of proliferation of weapons of mass destruction, terrorism, and smaller regional conflicts from a variety of irresponsible sources.

At the same time, the inevitable spread of advanced technology in a global economy has made some critical items virtually ubiquitous. Senator Boxer, in particular, alluded to a number of them. It has greatly increased the number of nations capable of producing and utilizing many advanced technologies. As a result, it's become harder to reach an international consensus on what threats we face and on how best to respond to them. It has become harder to enforce agreements that we do reach.

For many nations, economic objectives are now paramount as they seek to penetrate new markets.

Yesterday's adversaries are today's customers. Yesterday's allies are today's competitors for those same customers, is the challenge we face and the challenge that all of our allies in the industrialized world face.

Even though our policy is clear, our ability to implement it is not. The world abhors chemical and biological weapons, for example, but they can be produced with 40-year-old technologies using feedstocks and equipment that are found in hotel kitchens, breweries, universities, even high schools all over the world. We know from our own experience that even building a nuclear weapon does not require sophisticated computers.

Within this changed context, I would like to address several of the issues that Senator Bond raised in his statement and that were in his letter of invitation to us. My colleagues will go into some greater detail on a number of them.

The Export Administration Act expired over a year ago. The President has continued to fully enforce and implement the provisions of the EAA and all its rules and regulations pursuant to the IEEPA, the International Emergency Economic Powers Act.

To the extent that law permits, we are continuing to do business as usual. However, there are some shortcomings in IEEPA that I think the Committee should be aware of.

First, lesser penalties are available to deal with violations. For example, the maximum fine for a criminal violation of IEEPA is \$50,000. Under the EAA, it's \$250,000 for an individual and \$1 million or five times the value of the exports for a company.

The Administration has also proposed in its own EAA legislation a substantial increase in those fines.

The recent \$2.6 million civil penalty that we levied on Halliburton would have been much less, had the violation occurred under IEEPA rather than the EAA. That means, of course, that our

ability to deter and our ability to punish is much less, the longer we operate under the IEEPA.

Second, IEEPA lacks the special police powers that the EAA provides for our enforcement special agents, including the authority to carry weapons and to execute warrants. We have accommodated that problem temporarily by having our agents sworn in as special deputy U.S. marshals for the Justice Department. This has been an inconvenience and some small cost to us, but it has not yet seriously handicapped our enforcement efforts.

Third, and probably most important, there are a number of EAA process provisions that are not expressly provided for in the IEEPA which have been challenged, including through litigation in the past. Those provisions include antiboycott enforcement, confidentiality of business information, rulemaking requirements, technical advisory committee provisions, requirements for a hearing on the record, and the use of an administrative law judge in enforcement cases.

I want to emphasize for the Subcommittee that the absence of specific authority in these areas has not been a major problem so far but it is concern that we have if the EAA remains unauthorized for a long period of time.

In addition, though, there are other reasons why I hope that the Subcommittee and the Congress will move promptly to reauthorize the EAA.

The now-expired version was designed for the world of the Cold War that I described earlier. Its language does not adequately take into account the likely focus and procedures of the New Forum, nor does it acknowledge a number of procedural advances that we're in the process of making.

During the last Congress, this Subcommittee favorably reported S. 2203. Although we had reservations about certain provisions, the Administration supported Senate passage of that bill.

It's essential that the legislation that you take up provide the Administration with the authority and flexibility to address a complex and evolving mix of proliferation, security, and foreign policy goals.

Our concerns with the bill last year were related to limitations on the President's authority to use IEEPA in the case of real true emergencies, administrative procedures relating to the commodity jurisdiction and license review processes, constraints on Presidential flexibility in areas such as multilateral negotiations, prohibition on authority to create license-free zones, excessive reporting requirements, and the missile and the CBW sanction language.

This year, the President has made clear he is again committed to reauthorizing the EAA and he welcomes the efforts of Senator Bond and Congressman Roth in particular to that end.

Although the Administration continues to support its 1994 EAA proposal, we have also been working, primarily with the House, since it was their impasse that blocked action on the bill last year. Congressman Roth has been working closely with the Administration and with the House National Security Committee to produce a bill that can avoid last year's problems. It's too soon to know the outcome of that process but we have confidence in Mr. Roth's experience and certainly in his commitment to this goal.

As this Subcommittee knows, over many years of often painful experience, experience that I shared, the challenge of producing a bill has always been holding the center against the extremes.

Some business groups demanding substantially loose controls and nonproliferation advocates insisting on much tighter controls and considerable animosity between the two, unfortunately, the middle ground often is caught in the crossfire and overwhelmed.

I hope all interests recognize the impossibility of prevailing with single-minded positions, and instead work together with us on a proposal that contains genuine reforms without threatening our security.

The Administration's bill and the bill approved by this Subcommittee last year largely met that standard, and we look forward to working with you again this year. The battles to reauthorize this Act have often been contentious by they've rarely been partisan. I hope the EAA renewal process this year will go forward in the bipartisan spirit that has characterized this Subcommittee's work in particular on previous reauthorizations.

The end of the Cold War and the increased concern about the proliferation of weapons of mass destruction and threats to regional stability, including in countries like Iran, Iraq, Libya, North Korea have necessitated both revisions in our control strategies and a reappraisal of their role in our overall nonproliferation policy.

We are concentrating our efforts now on a narrow range of transactions that could threaten our national security or assist in the development of weapons of mass destruction and destabilizing conventional weapons capabilities. That means we focus our controls on truly critical goods and technologies and on specific problem end uses and end users. That puts a greater burden on our enforcement machinery, on the intelligence community, and on businesses themselves to know their customers and to inform us when they see something that concerns them.

Senator BOND. Mr. Secretary, excuse me for interrupting, but we have a vote coming up at 11:00 o'clock. We'll make the full statements a part of the record. You can take such time as you want, but the chances of our concluding by 11:10 are greater if you can summarize your statement.

Mr. REINSCH. I will be glad to do that, Mr. Chairman.

I will just mention that in the remaining part of the statement, we indicate a number of the reforms that we have already undertaken with respect to liberalization in the computer communications area, with respect to rewriting the regulations, with respect to developing, as Senator Bond alluded to, an Executive Order that will provide for a quicker, clearer license review process based on the principle that different agencies bring different equities to the table.

We have agreed on that process. We expect that Executive Order to be issued very shortly, and we would be happy I think to discuss that in greater detail in questions. That includes a dispute resolution process at the political level that we have also streamlined.

The United States has taken a lead role in developing a successor arrangement for COCOM to address the problem of pariah nations acquiring dangerous conventional arms and dual-use goods.

On that matter, I know Ambassador McNamara's going to go into greater detail, and I think what I will do is simply defer to him with respect to the details of that discussion, and we can continue on with that in the question period as well.

Having made reference to all those things, however, let me make clear that there are inherent limitations on the extent to which export controls can solve nonproliferation problems. We live in a global marketplace. Many critical technologies, such as computers, are available worldwide at levels of performance far beyond what is necessary, for example, for nuclear weapons development. Some technologies, like what Senator Boxer mentioned, such as software, can be transmitted by telephone. They pose unprecedented control challenges. Others, such as chemical precursors are widely available and have numerous legitimate uses in addition to uses that we seek to deter.

The consequences of excessive export controls can be devastating for American businesses just as inadequate controls can undermine our nonproliferation efforts.

Export controls are an important arrow in our quiver if we maximize their potential for success and we minimize the damage they do to our economy to the extent that we can multilateralize them and focus them on those items that actually can be controlled and which are choke point technologies, without which weapons of mass destruction and destabilizing conventional arms capabilities cannot be built.

That is the focus of our policy. That is the balance that we're trying to strike, and that is what we hope to discuss with you after my colleagues finish their statements.

Thank you.

Senator BOND. Thank you very much, Secretary Reinsch.

Thomas E. McNamara, Assistant Secretary for Political-Military Affairs in the Department of State.

Welcome, Secretary McNamara.

**OPENING STATEMENT OF THOMAS E. McNAMARA
ASSISTANT SECRETARY, BUREAU OF POLITICAL-MILITARY
AFFAIRS, U.S. DEPARTMENT OF STATE, WASHINGTON, DC**

Mr. McNAMARA. Thank you, Senator.

It's a pleasure to be here and I want to express the regret that Under Secretary Lynn Davis' being unable to be here today. She's engaged in some high level meetings with a visiting Russian delegation.

I will also try and summarize very briefly the opening statement that I had for the record.

Senator BOND. All of the statements will be submitted in full for all of us and for all of the other Members of the Subcommittee.

Mr. McNAMARA. Thank you.

I will move right then to the question of the New Forum, successor to the COCOM.

The Gulf War, as we all know, was a stark reminder of the dangers to international peace and security that can result from destabilizing buildups of conventional weapons and indiscriminate export of arms and sensitive dual-use technologies and in armaments themselves.

To respond to the new security challenges that were posed by this problem, 2 years ago, President Clinton proposed the international community put in place, for the first time, a global multi-lateral regime to control arms and dual-use technologies.

I am pleased to report that last week, in the Hague, 28 countries have come to an agreement in-principle on the major outlines, the goals and objectives, and some of the details but not all of them, of such a New Forum, which is the name that we have given to this entity.

We expect and hope that negotiations between now and the end of the year will lead to setting up the New Forum, getting it in operation by the end of this year.

The two major goals of the regime will be to prevent destabilizing buildups of weapons in regions of tension, such as South Asia and the Middle East, by establishing a forum which will have a process of transparency, consultation and, where appropriate, common policies of restraint among the members. The second goal is to deal firmly with states whose behavior is today a cause of concern, such as Iraq, Iran, North Korea, and Libya. This will be done through restraint in the export of weapons and weapons-related and other sensitive, dual-use technologies to those countries.

Iraq showed all of us, all 28 who joined in the Hague meetings, that often the only constraint on the state's ability to obtain arms is its ability to pay for them.

Both the east and the west, including unfortunately the United States and its allies, contributed in different ways to Saddam Hussein's multibillion dollar military buildup.

We have learned our lesson, and the New Forum will provide the framework to help prevent such a dangerous buildup and dangerous situation from arising again.

The task is difficult. The commercial stakes involved in conventional weapons sales are quite high, and the trade in dual-use industrial technologies is quite extensive.

Conventional arms transfers indeed are legitimate means for advancing our foreign policy national security goals. However, we have to keep in mind that they can alter military balances, they can disrupt U.S. military operations, they can cause significant troop casualties, as we find in so many parts of the globe today. They can drive up our military costs and outlays.

Such exports can also give potential adversaries the ability to deliver and to develop weapons of mass destruction.

Today, the participants of the New Forum have a common policy with respect to their trade to the four pariah states that I mentioned. They wish to control and to limit the trade in arms and arms-related technology and sensitive dual-use items.

For the future, the New Forum will attempt to guard against destabilizing conventional buildups through several mechanisms that the partners are agreeing upon, and indeed are meeting today in Paris to work out some of the details.

First, we'll be sharing intelligence on global trends and threats.

Second, we'll be providing information on trade in arms and advanced technologies by the participating countries in regions of conflict.

Third, we'll be consulting on a regular basis about dangers that are perceived and developments that seem to be threatening.

Finally, we'll develop common approaches including appropriate policies of restraint with respect to these arms and dual-use technologies.

I want to point out, however, that unlike COCOM, the New Forum will not be directed against a state or group of states. It will not impede bona fide civil transactions, nor will it interfere with the rights to states to acquire legitimate needs by which to defend themselves.

With the Cold War coming to an end, we and our allies concluded that COCOM's strategic rationale was no longer tenable, nor were the procedures and controls that had been associated with it. As a result, the New Forum will be based on national controls. In the current strategic environment, vetoes are a thing of the past. But the end of COCOM has not meant the end of controls. We are in the process now of working out an orderly transition from the COCOM control regime of the past to the New Forum mechanisms of the future. Russia and the Visegrad-4 countries and other states of Eastern Europe are either members or wish to become members. That is another significant difference from the old regime.

Let me talk very briefly about export controls and proliferation.

Many countries that want to join the new regime are bringing their national controls into line with the membership criteria that have been laid down for this New Forum. In fact, they wish to join the New Forum; they are not being driven into it.

This advances U.S. security and it also advances our commercial interests in a larger effort to increase international support for the same measures that we use to fight proliferation so that they will join us in this fight and not be obstacles.

We benefit from export controls when they are multilateral. We have made major efforts over past years in making multilateral controls the norm. This is another example, the New Forum, of multilateral controls coming on line.

Mr. Chairman, let me briefly close by making some references to the Export Administration and Enhancement Act. You know that the State Department and the Administration has supported passage of S. 2203 because it provides many of the export control authorities requested by this Administration.

Any new Export Administration Act must provide the Executive with the authorities and the flexibility to address a complex and evolving mix of nonproliferation, security, foreign policy, and economic goals.

We oppose sections of S. 2203 which direct the Secretary of State to seek specific objectives in multilateral regime negotiations, such as the creation of secretariats or prior consultation on export licenses. We have tried these; ultimately, we have not been able to achieve them.

We also oppose statutory presumption of approval and disapproval, which could result in export control policies that differ from the multilateral regime standards that we're trying to propagate through the New Forum and other mechanisms.

There are other aspects of the Senate bill that we have difficulties with but, overall, as I noted earlier, the Administration gen-

erally supported passage of S. 2203 as it provided many of the export control authorities requested by the Administration.

I would be glad to answer any questions that you have on the bill, or on the New Forum or any other aspects of our policies area. Thank you.

Senator BOND. Thank you very much, Mr. McNamara.

Mr. Sullivan, what is your title in the Department of Defense?

Mr. SULLIVAN. I am the Deputy Director of the Defense Technology Security Administration.

Senator BOND. We are glad you could come. We are disappointed that Mr. Tarbell and others didn't, but I assume that you are the one who really does the work anyhow and that's probably why they sent you. Is that a fair assessment?

Mr. SULLIVAN. Well, I am disappointed too that Mr. Tarbell can't be here, and he does more than his fair share of work, but I am nevertheless pleased to be here.

Senator BOND. I assume he has much more compelling reasons. But, Mr. Sullivan, we welcome you and ask you to give a statement on behalf of the Department of Defense.

**OPENING STATEMENT OF PETER M. SULLIVAN
DEPUTY DIRECTOR, DEFENSE TECHNOLOGY SECURITY
ADMINISTRATION, ON BEHALF OF DAVID S. TARBELL
DIRECTOR, DEFENSE TECHNOLOGY SECURITY
ADMINISTRATION**

U.S. DEPARTMENT OF DEFENSE, WASHINGTON, DC

Mr. SULLIVAN. Thank you, Mr. Chairman and Members of the Subcommittee.

Mr. Tarbell was called, at the last second, to an important meeting with the Deputy Secretary and regrets that he was unable to attend. Mr. Tarbell's statement is before you and in the record, so I will summarize more briefly that statement than my colleagues did theirs to allow time for questions.

The Subcommittee asked what type of EAA Defense would like to see emerge from Congress. The export control process, as you know, has been operating under the so-called IEEPA. We have been coping effectively.

As Secretary Reinsch pointed out, there are some problems on technical authorities, but in the main, we have been able to accomplish the mission and believe we have been operating and doing that effectively.

The Administration believes that a new EAA must provide for an export control process that is disciplined and reflecting an equal partnership among the agencies and departments with expertise in this area—the three main agencies or departments are represented at the table here.

The EAA should also preserve the President's flexibility by providing him with broad authority to adjust controls consistent with world developments and organize the Executive Branch process for implementing authorities in the EAA. The Administration's proposal sent to the Congress last year embodies these principles.

As my colleagues noted, S. 2203 in many ways is consistent with elements of our bill, but contains a number of provisions which are problematic and about which we have reservations.

I will not repeat what my colleagues stated, but I just wanted to emphasize that the area of Presidential flexibility is one where S. 2203 is most problematic, including in license review procedures, time lines, presumptions, et cetera.

The Department of Defense continues to believe that export controls are a very important tool of national security policy. They help to reduce the risk of military conflicts by limiting the spread of destabilizing arms and dual technologies.

We have had to adjust the scope and focus of our controls after the Cold War, among other reasons, because of new, indigenous capabilities outside the United States and increased economic pressures throughout the industrial world to increase exports.

Defense has established the Counterproliferation Initiative as part of this Administration's nonproliferation and export control policy. Programs to acquire nuclear, chemical, or biological weapons and their means of delivery are widespread. The United States must be able to deter and, if necessary, prevail with conventional forces even if a regional aggressor threatens or uses weapons of mass destruction. Export controls are a key element of this strategy. Our export control policy is also intended to protect items critical for protecting our military advantages.

It is important to recognize that we do not control for control's sake. Because of the growing diffusion of technology throughout the world, we focus our export control efforts on choke point items or technologies that are critical to developing and deploying military capabilities.

By focusing our controls more tightly, we can make the acquisition of weapons capabilities much more difficult. We can also track on-going transfers so that we have a better sense of the capabilities of potential adversaries in any future Desert Storm.

Mr. McNamara already mentioned the efforts to establish a COCOM successor regime. The Department of Defense has been a partner in that effort as well, and strongly endorses and supports those efforts.

That will conclude my remarks, Mr. Chairman.

Senator BOND. Thank you very much, Mr. Sullivan.

Secretary McNamara, in June, Vice President Gore and Prime Minister Chernomyrdin reached an agreement on arms sales to Iran that paved the way for Russian participation at the high-level meeting in The Hague earlier this month.

I think it's important that we get a better understanding of what the Russians agreed to. Press reports indicate that Russia will be permitted to complete contracts for sophisticated weapons, including the MIG 29 and the SU 24 combat aircraft. Could you give the Subcommittee the details of the agreement? Did Russia agree to end all conventional weapons sales to Iran?

Mr. McNAMARA. The answer briefly is yes, Senator. The agreement was reached between the United States and Russia with respect to Russian arms transfers so that those arms transfers that are now under contract would end or be phased out in the near future.

Senator BOND. But the press reports say they include MIG 29's and SU 24's.

Mr. McNAMARA. No—well, what I was about to say is those that are going to continue into the short-term future do not include any advanced weapons or high-tech weapons systems with the possible single exception of a kilo-class submarine which may be transferred.

The other equipment and arms that will continue to flow for this short period of time as these contracts are closed out and phased out do not include high tech, highly advanced weapons systems.

Senator BOND. No MIG's, no SU 24's?

Mr. McNAMARA. Not to my knowledge, Senator.

Senator BOND. But the kilo-class submarine?

Mr. McNAMARA. It is possible that there will be one more. They have already transferred that submarine, and it is possible that one more would go.

I would point out that I—

Senator BOND. That's a rather significant concern.

Mr. McNAMARA. Well, I would point out that we would ourselves be pleased if this were to all end right now, but it is important that Russia did agree, one, to end the relationship, two, to tell us the extent of that relationship, the types of arms, to give us assurances that there were no high-tech items with the possible exception of this submarine, and to come in effect into the consultation process of the New Forum, having agreed to close out this very dangerous and very troubling relationship with Iran.

Senator BOND. Speaking of dangerous and troubling relationships, I understand the agreement did not address the issue of nuclear cooperation between Russia and Iran. Is the United States trying to end this cooperation? What are you doing in this area?

Mr. McNAMARA. That is an issue that is still under discussion between ourselves and Russia.

I would point out that there's a substantial difference between our conversations with Russia on the closeout of the arms and that on the nuclear reactors. To begin with, the nuclear reactors are in effect a commercial and civil trade between Russia and Iran, not military trade.

Our concerns are that these reactors will give away the basis for an infrastructure in Iran which could be turned to military use in the future and that Iran, we believe, we strongly believe, has in process a military nuclear program that runs parallel to their civilian program.

The Russians believe that they can cooperate with Iran in the civil sector and not have it spill over into the military sector. In that regard, we and Russia have disagreement. We are discussing that and we hope to be able to convince the Russians that our approach is the safer one, is the one that is better able to contain nuclear proliferation that could potentially arise should Iran develop a viable military nuclear weapons system.

Senator BOND. Mr. Sullivan, does the Defense Department have a view on that?

Mr. SULLIVAN. The Defense Department fully agrees with the points that Secretary McNamara made. We have worked long and hard to get the conventional arms termination agreement and we believe it's a good deal.

We had full disclosure, as Secretary McNamara mentioned. We would prefer not seeing the additional kilo delivered and, indeed, are discouraging the Russians from doing that. But the idea of bounding the problem permanently is a major plus for our security interests.

The nuclear reactor problem continues under discussion and we are working with the State Department and trying to reinforce their efforts through our own contacts to achieve a resolution of that problem as well.

Senator BOND. Secretary McNamara, in your testimony, you say that Russia has undertaken to put in place effective export control systems and policies. In your judgment, does Russia have an effective export control system right now?

Mr. McNAMARA. I think Russia, along with a number of states in Eastern Europe, have relatively effective export control systems in place but they are not completely adequate.

They and we are in conversations, in fact we are assisting them through the Nunn-Lugar Program to develop better, more comprehensive, and up-to-par western standard export control regimes such as we and the British and the French and others have. They're not there yet. They are committed to getting there and we are committed to helping them get there.

We believe that the minimum necessary for them to participate in the New Forum indeed exists. They also have put forward, or are committed to developing those export control regimes in their countries, and particularly Russia, in order to participate fully in the other control regimes that have to do with weapons of mass destruction, such as the missile control regime and nuclear suppliers' group and other control regimes that they are members of.

Mr. REINSCH. May I add something, Mr. Chairman?

Senator BOND. Please, Secretary Reinsch.

Mr. REINSCH. One of our relatively unheralded programs I think is the work that all of our departments have done with Nunn-Lugar funds to try to help these countries develop competent export control systems, train their people, in some cases we have helped them draft their laws, we have helped them develop control systems, we have helped supply equipment to maintain effective border controls and to maintain effective administration of control systems.

We're trying very hard, at a very small cost, incidentally, to try to bring them along to facilitate the development of a system as effective as ours is.

Senator BOND. I am concerned that they've been brought into the system and they don't have an effective export control system. I assume you feel that's the best deal you can get?

Mr. McNAMARA. Not only is it the best deal we can get, it enhances the prospects that we can, cooperatively with them, develop those types of export control mechanisms that we believe are necessary.

This is also true of the Visegrad-4 that have joined the New Forum: Poland, Hungary, the Czech Republic and Slovakia. They also have some of the same problems that the Russians have with respect to export controls. But we believe that, in this manner, we enhance substantially the ability of getting such a regime in place.

Senator BOND. Secretary Reinsch, we have been hearing about an Executive Order that will be issued, giving reviewing agencies the right to look at all license applications reviewed by Commerce. This sounds like a positive step. When is that step going to be taken?

Mr. REINSCH. Very soon. I hope as soon as next week, Mr. Chairman. I discovered the other day that there is one remaining step at OMB that needs to be taken, a legal review. I think once that's complete, the President will sign it. The discussions between the agencies are complete. We are all in accord. It's ready to go as far as we're concerned.

Senator BOND. How's Commerce going to alert the reviewing agencies that an export license has come up?

Mr. REINSCH. We have already contacted them to remind them of the existing relations we have with them in terms of what they have already asked us to provide. We have given them a list of what we have already provided them, and asked them if they wanted anything else.

We are prepared to give them whatever they want to see. At this point, the ball's in their court to respond to us and tell us what they want to see. Whatever they tell us, we will provide.

Senator BOND. Senator D'Amato has asked that I query the Department of Defense that there are five agencies participating in the export licensing process. We understand each will have equal voices under the new Executive Order. Does the Defense Department believe that our national security interests are adequately protected under this arrangement? Or would it be better for national security that the Department of Defense have a veto over the issuance of any licenses?

Mr. SULLIVAN. Well, we believe the existing arrangements which will be codified in the Executive Order do allow the Defense Department an equal voice in the process. The issue of veto, I think, is a kind of a technical legal one. The Defense Department or any other partner in the export control process that has an objection to a proposed disposition on a license application can elevate that all the way up the chain of command, including, if necessary, to the President. That is essentially the way the process works now and will be codified in the Executive Order.

Senator BOND. Thank you, Mr. Sullivan.

Senator Boxer.

Senator BOXER. Thank you, Mr. Chairman.

Today's Washington Tariff—September 18, 1995, says the post-COCOM regime provides weak multilateral controls. It has no name, no controllers, no office, no rules, but the successor to the Coordinating Committee on Multilateral Export Controls, COCOM, formally welcomed into its membership, Russia, the Czech Republic, Hungary, Poland, the Slovak Republic. Although additional working level talks will continue to define the structure of the new organization, it appears the new regime will provide only a loose form of multilateral cooperation on the sale of arms and dual-use commodities.

Secretary McNamara, are you at all concerned that the newly negotiated agreement has far weaker control mechanisms than COCOM and that all export decisions, as I understand it, under

this agreement are left to the individual member governments, compliance is voluntary, and therefore there would no real means of enforcement? How will the U.S. adequately safeguard its national security?

Mr. MCNAMARA. As I said in my opening statement, there are some similarities but there are also some differences with COCOM.

First of all, I would disagree with the thrust of the article. The suggestion that this is somehow a weak instrument that states coming into it are not really committed to flies in the face of what we have learned in the course of negotiating this agreement.

There is a common set of objectives that the states joining this agreement have. Above all, and I pointed this out in my opening statement, above all, we have all gone through the experience of dangers of the Gulf War and of the Saddam buildup that led to that. There is a firm commitment on the part of all of the members that are coming in that that should not happen again.

The objectives of the agreement are to, in fact, prevent such destabilizing buildups in regions of concern.

Another objective is to deny arms to those countries of greatest concern, of the most serious concern. I mentioned some of those.

Finally, and this is most important, there is an understanding that the objective of this is to coordinate export control between the countries in the New Forum, to develop common approaches and common policies with respect to export controls. So in fact what we have is a group of like-minded states who wish to see something effective developed.

Now it is not COCOM. This is a different world. COCOM was directed at one region, specifically at the Soviet Union and its partners in Eastern Europe, and then it was expanded somewhat to include others. It had a specific focus in a Cold War context of which we were out to deny, in effect, technology to another society, with which we were at war. We were successful in COCOM in achieving those objectives.

Here, we're talking about a regime which has a global scope. It's not directed specifically, as was COCOM. Rather, it's out there to be flexible enough so that we can apply the principles and the objectives to whatever comes up on the international scene in coming years. It may be the Middle East, it may be South Asia, it could be Northeast Asia. It could be in another region of the world. Therefore, it needs to be much more flexible than was the case of COCOM.

Finally, I would point out that the export control mechanisms that are being put in place are going to lead to a raising of the overall level of export controls worldwide by the most productive exporters of arms and dual-use technologies. That can only lead to a strengthening of the world's capabilities in keeping arms and dual-use technologies of greatest concern out of the hands of dangerous states. So I don't think it's a weak mechanism.

Let me point out that when we started down this path many years back with the nuclear suppliers' group, later with controls on chemical weapon precursor chemicals, later with controls on missile technology, those regimes did not start out at their highest level at which they have now come to after many years of being in existence.

I would not suggest here before this Subcommittee that this New Forum has reached its maximum potential. Indeed, it is a new organization that will be feeling its way in the first few steps next year as it gets underway. But it is a viable organization. It's an organization which has common goals and principles. Finally, I think it is an organization that, based on our experience in other control mechanisms such as the missile technology controls and nuclear suppliers' group controls, that will evolve and develop into a strong and very healthy organization.

Senator BOXER. Thank you.

I think it's important that you lay that out, given some of the comments that are being made.

So basically you feel comfortable that there is a common interest in controlling dangerous exports, and that there's flexibility to make sure that happens, even though there's no enforcement. I guess I would like to know, is there agreement in the New Forum as to which countries would be cause of serious concern?

Mr. McNAMARA. Yes, there is. There is also an agreement that these countries of greatest concern may change over the course of time, and that there will be additions and deletions from the—it is not a formal list, but from the common understanding of which countries are the countries of greatest concern.

Senator BOXER. If there's no formal list, then each country's going to make a decision on its own. That makes me nervous.

Mr. McNAMARA. In fact, that's what the consultative procedure will be designed—

Senator BOXER. What? I am sorry?

Mr. McNAMARA. That's what the consultative procedure will be designed to do. It will be designed to bring us together so that we can discuss which countries, at any given time, are the ones of greatest concern. Right now, there is common understanding and agreement which ones are of greatest concern.

What I was trying to say was that there is no formal list. For example, in COCOM, we had a formal list. It was essentially the same list throughout the period of COCOM. That would not happen in this case.

We will add and take countries out of our own category of greatest concern and so will our partners. Then we'll sit down and discuss whether we all agree on which countries are of the greatest concern. For the beginning, we are agreed.

Senator BOXER. OK.

Mr. Chairman, I have only one more question.

This is such a difficult subject because we know that when you deal with export controls of dangerous technologies, it's one thing, but as I stated in my opening statement, sometimes it falls over to technology that really are very questionable, and that's where the rub comes in, what are these technologies.

So I am concerned about an issue that was raised just a couple of years ago when I first got on this Subcommittee in a bipartisan way, and that is the extent that the U.S. software industry is being put at a competitive disadvantage.

I would just ask any of you gentleman, and particularly I think from Commerce and from State whether, to your knowledge, have we ever done a study to determine what extent the U.S. software

industry is being put at a competitive disadvantage? Is there any study that's been developed internally on that?

Mr. REINSCH. Following up the legislation that you reported last year, Senator Boxer, the Vice President directed a study to be undertaken internally essentially by us and NSA that would look largely at the foreign market and where the U.S. industry was viz a viz the foreign market and what was happening in the foreign marketplace. It would touch on the issue you raised. The study right now, the basic work has been completed and it's undergoing interagency review.

Senator BOXER. Interagency it's being sent to who?

Mr. REINSCH. Primarily it's under discussion between us and NSA, the State Department, the Defense Department, the usual crew.

Senator BOXER. Well, the reason I ask this is because that's the problem that we have once we start sending it off.

The question is, are we at a competitive disadvantage, and I would hope that Commerce would give us an answer to that.

Now, whether there's a reason we should, I mean, in other words, maybe we decide we want to be at a competitive disadvantage, maybe we decide we don't want our companies to be able to compete in certain areas because of security reasons or defense reasons. But I sure would like to have an answer to that because, let me tell you, from the standpoint of testimony that I have received, letters that I have received, I feel that we are, but that's anecdotal and it isn't in study form, so?

Mr. REINSCH. There is another effort, a public effort to have a dialog with the industry on precisely this question that I think it should factor in.

The Administration has had several meetings, most recently I think last week or the week before, with, you know, the software industry broadly defined. We laid out a set of parameters and criteria for, that would permit the export of more highly encrypted product than we have permitted thus far.

We have entered into a dialog with the industry to try to reach agreement on those criteria. They came back with comments. They didn't like all of ours. We are reviewing the comments. We'll make some revisions. But I think that that is underway, and I would hope that we would all give it a few more weeks to play out.

Senator BOXER. That's the one that I am really interested in. So will you let us know when that's available?

Mr. REINSCH. Certainly.

Senator BOND. We will look forward to receiving those.

Thank you, Senator Boxer.

Mr. Sullivan, there's a proposal being discussed in Congress to transfer the Dual-Use Export Licensing function from the Commerce Department to the Defense Department. What is the position of the Department of Defense on this proposal?

Mr. SULLIVAN. We would be opposed to that. The Defense Department doesn't covet any other agency's responsibilities in the export control area. We have our own. We provide advice and recommendations on the military national security implications of export control policies and license applications.

We, as you know, have a full agenda doing that. We do not need, nor desire, nor do we think it's useful to take on additional administrative licensing responsibilities.

Senator BOND. I believe it would be very helpful for this Subcommittee if we had in writing, from Secretary Perry or Under Secretary Slocum, the substantive reason why this function would not be appropriate in the Department of Defense. I commend you for not coveting other agencies' responsibilities, but I intend to argue that point on the floor, and whether you covet it or not may not really carry the day.

So if you would have the Secretary or Under Secretary provide us, in writing, the details why it would not be appropriate, I would appreciate that.

Mr. SULLIVAN. Yes, sir.

Senator BOND. Secretary McNamara, there is in the House a proposal to move export licensing to the State Department. What is the position of the State Department on that proposal?

Mr. McNAMARA. Our position, Senator, is that the current arrangements whereby the State Department licenses munitions list items and Commerce licenses commercial items, is the proper way to go.

I would point out, in support of the comments by Mr. Sullivan, that there's a certain balance being struck here, as you noted, and we all noted in our comments, between national security concerns and trade development and export promotion concerns. There is a certain amount of tension there. By having the proper mix of departmental involvement by Department of Commerce, by Department of State, by Department of Defense, we think we come out with a balanced product that promotes, to the maximum extent possible, export and U.S. industry objectives, and at the same time preserves our national security interests.

We don't think that moving it all to the Department of Commerce or moving it all in the direction of the Department of Defense is the way to go.

There needs to be a certain tension and dynamic interaction between the Departments involved; State, Defense, and Commerce primarily. We think that is present. We think the mechanisms that we now have for licensing are adequate to preserve that balance that we're all seeking.

Senator BOND. I personally support the Administration's position on both proposals, and to the extent you can provide us with supporting information, that will be helpful in our floor debate.

Mr. REINSCH. Needless to say, Mr. Chairman, we support that position too.

Senator BOND. I have one for you, Mr. Reinsch. This is a tough question for you. What would be the impact of the 25 percent cut in the Bureau of Export Administration's budget in the Commerce-State-Justice appropriations bill?

Mr. REINSCH. It would be devastating, Mr. Chairman.

On the licensing side, it would slow down the licensing process. It would cripple our outreach efforts, particularly on the West Coast, particularly in California and also in Washington. We would have to shut down some facilities there. It would make it much more difficult to let the people know both what their obligations

are and what their opportunities are and to get out the word about our rigs.

On the enforcement side, it would also severely handicap us. We would have to shut down roughly half of our field offices. We currently have approximately 1,600 active investigations underway. We would only be able to carry about half of that with the kind of cut that's been described. It would also seriously affect our anti-boycott investigations as well, which I know has been a big concern to this Subcommittee, having written that law a number of years ago.

Senator BOND. In your judgment, could it possibly result in problem technology leaking out of the country?

Mr. REINSCH. Yes, I think without question.

Senator BOND. I am going to be joining with the Junior Senator from South Carolina in arguing for restoration, and your advice will be very helpful.

A more difficult question. Some of my colleagues have raised concerns about specific export authorizations. Three of these that have gained some notoriety are the export of stealth technology, a mothballed aircraft carrier to India, and aircraft engines to China. Would you mind commenting on these subjects?

Mr. REINSCH. Yes. Let me try to put a nail in the coffin on some of these.

First, on my personal favorite, the aircraft carrier. This is a ship that was launched in 1944, decommissioned and mothballed in 1970. We determined that it was scrap and eligible for export to India. We made that determination based on signed certification from the Defense Logistics Agency and the Naval Sea Systems Command that the ship was no longer usable for anything but its reclamation value, and that the weapons on board had been dismantled, removed, rendered inoperable, whatever.

The ship, in addition, I might add, a Member of the other body, the House of Representatives, a Member of the Defense Appropriation Subcommittee visited this ship before it left port. It arrived in India accompanied by an American film crew, so I think I can say with some confidence that it got there, and as far as we know—it was towed there—it's being broken up into scrap.

We also had, according to our notes, telephone concurrences from both the State Department and the Defense Department that this was properly licensable as scrap.

On the stealth issue, you're referring to a GAO report which reviewed categories of items and found effectively I think agreed that the procedures that are in place right now were, in fact, implemented but was critical of the procedures.

The Executive Order, which we discussed earlier, that would permit all agencies to see all licenses would, I think, prevent the recurrence of the episode they cited. The problem with the licensing system, of course, is that things occur in categories. GAO looked at categories. We have a number of categories that contain some stealth items and some items that are not related to stealth technology, and also cases of items like golf clubs, for example, which include some of the same kind of materials that have stealth utility.

Looking at all of those, the GAO report looked at categories, not items. When we reviewed actual items of 151 applications I believe they reviewed, we found two, both cases of a radar absorbing paint, that they felt had been misclassified by us as a dual-use item, rather than a military item.

We agreed with that. That was a mistake on our part. The appropriate corrective action was taken and the items were transferred to the State Department who declined to license them as munitions and according to GAO, neither was ever exported.

On the question of—

Senator BOND. Aircraft engines to China.

Mr. REINSCH. Aircraft engines to China, this has been much in the news mostly in previous years. This goes back a long way.

I think the short answer is the decision that was made was like all the decisions that are on the table here, was made with full interagency consultation and concurrence.

These engines are for fighter-trainers that the Chinese both use themselves and also export. This is 1970 or 1974 FAA certified technology, not cutting edge. The allegation that was made—

Senator BOND. That it could be used in a cruise missile.

Mr. REINSCH. That they have cruise missile applications. I think our collective engineers' judgment in all of the agencies was, I guess the short answer is they don't fit. The weight is wrong, the diameter is wrong, the parameter is wrong.

Senator BOND. It would be a very big cruise missile.

Mr. REINSCH. The parameter is wrong, and the design is wrong. A fighter-trainer engine is designed for long life, high reliability. These engines are designed for 10,000 hours between overhauls. Cruise missile engines are designed for a single use, now at the maximum 15 hours. The whole design is wrong.

I think we collectively concluded that if the Chinese wanted to re-engineer it, it would have been cheaper to start from the beginning, rather than to try to do that.

Senator BOND. Mr. McNamara and Mr. Sullivan, we know that you didn't review the stealth golf clubs, but did you concur with Secretary Reinsch's views on the other two?

Mr. McNAMARA. We were in concurrence with respect to those.

Senator BOND. Secretary McNamara, one of the things that concerns me is the fact that press reports indicate only Iraq, Iran, North Korea, and Libya are targets of the new regime's controls.

The United States has labeled Sudan, Cuba, and Syria as sponsors of terrorism. What is the Administration going to do to get these countries included on the list of target countries? Or are you just giving up on that?

Mr. McNAMARA. Well, first of all, the objectives of the New Forum are not exclusively focused on those countries that you named. Indeed, as I pointed out, we hope, expect and have agreement that we will discuss globally our concerns with respect to other countries which may be of concern, and some which may not be of concern, so that we are not exclusively focusing the regime on just a small list of three, four or so countries.

Second, with respect to the countries such as Cuba, Sudan, and Syria, we in particular discussed with our partners in this regime, the need to focus on those countries which are of the greatest con-

cern because of military buildups, military programs that are clearly destabilizing and those countries that are in regions where instability is strongest.

In the case of Cuba, for example, we don't see any major military buildup right now. It's not in a region that is either in conflict or threatening to be in conflict, nor where instability is a major problem right now.

So therefore it seemed logical, since the ground rules as to where we were going to focus our attention was on regions of instability and countries of greatest concern, that although we, the United States, have concerns that Cuba, Syria, and Sudan are engaged in activities that we find bothersome and worrisome and dangerous, that they were not those of the greatest concern. That does not mean that they will not be discussed, it does not mean we will not consult on them; we will.

Senator BOND. Thank you very much, Secretary McNamara.

Gentlemen, thank you very much.

The hearing is adjourned.

[Whereupon, at 11:15 a.m., Thursday, September 21, 1995, the Subcommittee was recessed subject to call of the Chair, and the hearing was adjourned.]

[Prepared statements supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN ALFONSE M. D'AMATO

The Export Administration Act ("EAA") is an important part of the United States' national security framework. The EAA is an essential component in the country's battle to prevent hostile countries from obtaining weapons or critical technologies. I commend Senator Bond for his work on this issue over the last couple of years.

The first export control legislation was enacted in the late forties and has been repeatedly updated. The last three attempts to rewrite the EAA in 1990, 1992, and 1994 have failed. The EAA must be rewritten because the current legislation is quickly becoming outdated due to fast growing technology. Since the Export Administration Act has expired, for the past year the Administration has been forced to operate under the emergency authorities from the International Emergency Economic Powers Act ("IEEPA"). There has also been an absence of a true export control system since March 31, 1994 when the Coordinating Committee on Multilateral Export Controls ("COCOM") expired.

Yesterday, the Administration announced that the U.S. agreed to a new export control system to replace COCOM. This system will be responsible for preventing belligerent nations from obtaining weapons and dual-use items. In my view, this agreement will harm our country's interests. It creates more questions than it answers. *There is no office, no enforcement apparatus, no control list, no rules, and most importantly no required notification prior to an arms sale.*

In yesterday's *Washington Post* article, Under Secretary of State Lynn Davis "hailed the accord's provision to require notification of major arms sales as a new way to keep an eye on potentially destabilizing buildup of conventional arms such as that in Iraq during the late 1980's." But notification is not required until after the sale—when it is too late to do anything. U.S. officials have conceded that this "will sharply limit Washington's ability to persuade others to hold up any questionable shipments." This agreement gives away the store, and it will create future problems for the United States.

Our export control policy must be a balance—the U.S. export controls must not hinder U.S. companies from conducting business in the global market. An important factor in determining whether an item should be exported is foreign availability. We must not restrict U.S. companies from exporting items that are already available from other countries. Promoting U.S. exports is one of the country's top priorities, but we must insure the Nation's future safety by preventing exports of critical technology and weapons.

I want to repeat a warning that I made on the Senate Floor on February 7, 1994:

"I can only hope that the Administration does not place this Nation, in the unenviable position of having to deal with a Frankenstein nation, bred, nurtured, and empowered by the U.S.—and, of course, bent on doing our Nation or its interests, irreparable harm."

Again I commend Senator Bond for scheduling this timely hearing. I look forward to working with the Administration to craft a tough, effective, and efficient EAA.

PREPARED STATEMENT OF WILLIAM A. REINSCH

UNDER SECRETARY FOR EXPORT ADMINISTRATION, BUREAU OF EXPORT
ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, DC

SEPTEMBER 21, 1995

Mr. Chairman, I want to thank you and the Subcommittee for providing this opportunity to discuss the Government's dual-use export control program.

The Cold War, as long and costly as it was, had a certain elegant simplicity. The United States and its allies had a clearly identified enemy, and we largely agreed on how it should be contained. And it worked. We contained and eventually overcame the Soviet threat through multilateral cooperation.

Today's problems are not so simple. We face complex threats of proliferation of weapons of mass destruction, terrorism, and smaller regional conflicts from a variety of irresponsible sources.

At the same time, the inevitable spread of advanced technology in a global economy has made some critical items virtually ubiquitous, and it has greatly increased the number of nations capable of producing and utilizing many advanced technologies.

As a result, it is harder to reach an international consensus on what threats we face and how best to respond to them, and harder to enforce agreements we do

reach. For many nations, economic objectives are now paramount as they seek to penetrate new markets. Yesterday's adversaries are today's customers, and yesterday's allies are today's competitors for those same customers.

Even though our policy is clear, our ability to implement it is not. The world abhors chemical and biological weapons, for example, but they can be produced with forty-year-old technologies using feed stocks and equipment that are found in hotel kitchens, breweries, universities and even high schools around the world. We know from our own experience that even building a nuclear weapon does not require sophisticated computers.

Within this changed context, I would like to address the specific issues of concern to the Committee.

International Emergency Economic Powers Act (IEEPA)

The Export Administration Act expired over 1 year ago. The President has continued to fully enforce and implement the provisions of the EAA and all the rules and regulations issued under and pursuant to the International Emergency Economic Powers Act.

To the extent that law permits, we are continuing to do business as usual. However, there are several shortcomings in operating under IEEPA.

First, lesser penalties are available to deal with violations. For example, the maximum fine for a criminal violation of IEEPA is \$50,000; under the EAA it is \$250,000 for an individual and \$1 million or five times the value of the exports for a company. The Administration has also proposed increasing the maximum criminal fines to \$500,000 for an individual and the greater of \$1 million or ten times the value of the export. The recent \$2.6 million civil penalty levied on Halliburton would have been much less had the violation occurred under IEEPA rather than the EAA.

Second, IEEPA lacks the special police powers the EAA provides for Export Enforcement special agents, including authority to carry weapons and to execute warrants. We have made accommodations by having our enforcement agents sworn as Special Deputy U.S. Marshals through the Justice Department. This has been an inconvenience at some small cost, but it has not seriously handicapped our enforcement efforts.

Third, there are a number of EAA process provisions that are not expressly provided for in the IEEPA and which have been challenged, including through litigation, in the past. Those provisions include antiboycott enforcement, confidentiality of business information, rulemaking requirements, technical advisory committee provisions, requirements for a hearing on the record, and the use of an administrative law judge in enforcement cases. I want to emphasize that the absence of specific authority in these areas has not been a major problem so far, but it is a concern we have if the EAA remains unauthorized for a long period of time.

Reauthorization of the EAA

In addition, there are other reasons why we should move promptly to reauthorize the EAA. The now-expired version was designed for the world of the Cold War I described earlier. Its language does not adequately take into account the likely focus and procedures of the New Forum, nor does it acknowledge a number of procedural advances we are in the process of making.

During the last Congress, this Committee favorably reported S. 2203. Although it had reservations about certain provisions, the Administration supported Senate passage of that bill. It is essential that the legislation provide the Administration with the authority and flexibility to address a complex and evolving mix of proliferation, security, and foreign policy goals.

Our principal concerns are related to: (1) limitations on the President's authority to use IEEPA, (2) administrative procedures relating to the commodity jurisdiction and license review processes, (3) constraints on presidential flexibility in areas such as multilateral negotiations, (4) the prohibition on authority to create license-free zones, (5) excessive reporting requirements, and (6) missile and CBW sanction language.

This year the President has made clear he is again committed to reauthorizing the Export Administration Act, and he welcomes the efforts of Senator Bond and Congressman Roth in particular to that end. Although the Administration continues to support its 1994 EAA proposal, we have been working with the House, since it was their impasse that blocked action on the bill last year. Congressman Roth has been working closely with the Administration and the House National Security Committee to produce a bill that can avoid last year's problems. It is too soon to know the outcome of that process, but we have confidence in Mr. Roth's experience and commitment.

As this Committee knows over many years of often painful experience, the challenge of producing a bill has always been holding the center against the extremes. With some business groups demanding substantially looser controls, and nonproliferation advocates insisting on much tighter controls, and considerable animosity between the two, the middle ground often is caught in the crossfire and overwhelmed. I hope all interests recognize the impossibility of prevailing with single-minded positions and instead work together with us on a proposal that contains genuine reforms without threatening our security. The Administration's bill and the bill approved by this Committee largely met that standard, and we look forward to working with you again this year.

While the battles to reauthorize the EAA have often been contentious, they have rarely been partisan. I hope the EAA renewal process this year will go forward in the bipartisan spirit that has characterized this Committee's work on previous reauthorizations.

Export Controls and Changing Security Threat

The end of the Cold War and the increased concerns about the proliferation of weapons of mass destruction and threats to regional stability, including in countries like Iran, Iraq, Libya, and North Korea, have necessitated both revisions in our control strategies and a reappraisal of their role in our overall nonproliferation policy.

Accordingly, we are concentrating our efforts on a narrow range of transactions that could threaten our national security or assist in the development of weapons of mass destruction, and destabilizing conventional weapons capabilities. That means focusing our controls on truly critical goods and technologies, and on specific problem end uses and end users. That puts a greater burden on our enforcement machinery, on the intelligence community, and on businesses themselves to know their customers and inform us when they see something that concerns them.

Our reforms are intended to both strengthen our nonproliferation efforts and eliminate unnecessary and outdated restrictions on business. We seek to do that by: liberalizing outdated controls, reforming our regulations, streamlining the control process, and strengthening multilateral regimes.

In a series of actions in 1993 and 1994, we significantly liberalized controls on computers and telecommunications equipment, eliminating requirements for prior approval on over \$32 billion worth of exports. Due to the rapid pace of technological development in that sector, a new review of that control limit is currently underway.

We have rewritten our regulations to be more user-friendly, something that had not been done for more than 40 years. We have consolidated all Commerce export license forms into one, easing the burden on business and cutting processing time. We have also provided step-by-step compliance instructions, which the old regulations lacked.

We have taken the advice of exporters and produced a quicker, clearer license review process based on the principle that different agencies bring different equities to the table. We have agreed on a process in which all relevant agencies can review license applications, and, in return, they committed to a rapid, time-limited response based on law or regulation, and an acknowledgement that silence means concurrence in the Commerce position.

We have also streamlined the dispute resolution process at the political level, with strict timeframes, and clear procedures to escalate and decide disputes. We are also in the process of concluding an interagency review of commodity jurisdiction procedures both in general, and for particular sectors like developmental aircraft and satellites.

The U.S. has taken a lead role in developing a successor arrangement for COCOM to address the problem of pariah nations acquiring dangerous conventional arms, and dual use goods. We will also continue to work with the nonproliferation regimes—the Australia Group, the Nuclear Suppliers Group, and the Missile Technology Control Regime to encourage consistent, and forceful implementation of export controls in all member countries and to broaden membership to include responsible supplier countries.

We are also helping several successor states of the former Soviet Union, as well as Central European countries, develop effective export control systems of their own. In many ways, this is one of our most important activities. "Leakage" of technology from these states, in my judgment, is a far greater threat than failures in our own control procedures. Anything we can do to facilitate the creation of effective border controls and export control policies in these states will pay huge nonproliferation dividends.

Even with this increased level of activity, I want to make clear that there are inherent limitations on the extent to which export controls can solve nonproliferation problems. As I said, we live in a global marketplace. Many critical technologies,

such as computers, are available worldwide at levels of performance far beyond what is necessary for nuclear weapons development, for example. Some technologies, such as software, which can be transmitted by telephone, pose unprecedented control challenges. Others, such as chemical precursors, are widely available and often have numerous legitimate uses in addition to those we seek to deter. The consequences of excessive export controls can be devastating for American businesses, just as inadequate controls can undermine nonproliferation efforts.

Export controls remain an important arrow in our quiver, but we maximize their potential for success and minimize the damage they do to our economy to the extent we can multilateralize them and focus them on those items that actually can be controlled and which are chokepoint technologies—without which weapons of mass destruction, and destabilizing conventional arms capabilities cannot be built. And that has been precisely the focus of the Administration's policy.

Conclusion

We seek to balance legitimate security needs with those of our economic well-being. And we seek to expand the partnership between Government and industry. We are partners in the pursuit of exports and economic growth—the Commerce Department in particular has been exceptionally aggressive and effective in helping business market its products overseas—and we must also be partners in the effort to stop the spread of dangerous technology to countries of concern.

We believe our policy and our actions accommodate the changes that have occurred in the world and look ahead to the next century, grounded firmly in the recognition that we must remain viable global competitors, while neither contributing to the spread of weapons of mass destruction, nor to the military capabilities of pariah states. If we can maintain these principles and implement them consistently, I am confident that we can meet the challenges of the future. I will be happy to respond to any questions you may have at this time.

PREPARED STATEMENT OF THOMAS E. McNAMARA ASSISTANT SECRETARY, BUREAU OF POLITICAL-MILITARY AFFAIRS U.S. DEPARTMENT OF STATE, WASHINGTON, DC

SEPTEMBER 21, 1995

Thank you for the invitation to appear before the Subcommittee. I would like to use this opportunity to take stock of our accomplishments of the past year to control the spread of arms, and in particular to discuss where we are in our efforts to establish a new regime to replace COCOM.

Preventing the proliferation of dangerous arms is the key to preserving American security in the post-Cold War world. The Administration has given this a very high priority as we respond to the challenges of global and regional threats.

We have had a number of successes. The indefinite and unconditional renewal of the Nonproliferation Treaty has set a global framework to prevent the spread of nuclear weapons. The Agreed Framework with the North Koreans has frozen the North Korean nuclear program and, as the Framework is implemented over the next 5 to 10 years, will end North Korea's nuclear threat to stability.

In discussions between Vice President Gore and Prime Minister Chernomyrdin held in late June, we took a number of very important additional steps to ensure the security of nuclear materials in Russia. These included agreements to establish cooperative programs to enhance security and accounting at civilian nuclear facilities in Russia, to put the Highly Enriched Uranium agreement back on track, and to speed dismantling of nuclear weapons.

In missile proliferation, we have gained the agreement of Russia, Brazil, South Africa, and Ukraine to the guidelines of the Missile Technology Control Regime. Since agreeing in 1993 to abide by the MTCR Guidelines, Russia has undertaken to put in place effective export control systems and policies and has resolved the United States' concerns about past missile-related activities, such as the sale of rocket-stage technology to India. As a result, the United States is satisfied that Russia is meeting its commitments and we support Russia's immediate participation and membership in the MTCR.

As you are aware, our overall policy toward Iran includes our continued economic pressure on that country coupled with our ceaseless efforts to convince other governments not to contribute to Iran's pursuit of a military buildup. One example of our work in this area is that the U.S. and Russia have reached agreement on the issue of Russian arms sales to Iran. In June, Vice President Gore and Prime Minister

Chernomyrdin came to an agreement whereby Russia will not enter into any new weapons contracts with Iran, and will only service existing contracts. Russia's commitment to no new contracts is comprehensive in scope, and its existing contracts are reasonably limited in both time and content.

New Forum—Successor to COCOM

Last month marked the 5-year anniversary of Saddam Hussein's invasion of Kuwait. The Gulf War served as a stark reminder of the dangers to international peace and security that can result from the destabilizing buildups of conventional weapons and the indiscriminate export of arms and sensitive dual-use technologies.

To respond to the new security challenges posed by the spread of dangerous weapons and technologies, 2 years ago, President Clinton proposed that the international community put in place for the first time a global multilateral regime to control arms and dual-use technologies. Last week, 28 countries—including Russia and the Czech Republic, Hungary, Poland, and the Slovak Republic—convened in The Hague on September 11–12 for a High-Level Meeting and agreed to a set of political principles to guide the establishment, by the end of this year, of such a regime.

The two major goals of the regime will be to:

- Prevent destabilizing buildups of weapons in regions of tension, such as South Asia and the Middle East, by establishing a formal process of transparency, consultation, and, where appropriate, adopting common policies of restraint;
- Deal firmly with states whose behavior is today a cause of concern, such as Iraq, Iran, North Korea, and Libya, through restraint in the export of weapons and weapons-related and other sensitive, dual-use technologies.

The case of Iraq showed us that often the only constraint on a state's ability to obtain dangerous arms is its ability to pay for them. Suppliers from both East and West, including, unfortunately, the United States and its allies, contributed in different ways to Saddam Hussein's multi-billion dollar military buildup.

We have learned our lesson: the New Forum will provide the framework for helping prevent such dangers from arising again.

Let me describe the ways in which we will approach our task—a task made considerably more difficult because of the nature of conventional weapons and the commercial stakes involved in their trade as well as in related dual-use industrial goods and technologies.

Conventional arms transfers are a legitimate means for advancing our foreign policy and national security goals. However, conventional weapons have the potential to alter military balances, disrupt U.S. military operations, and cause significant casualties to our troops and those of our allies and friends. They also serve to drive up our military requirements by prompting us to field forces and develop and deploy weapons to meet the challenges posed by potential adversaries fielding large and reasonably sophisticated armies. Such exports can also give potential adversaries the ability to deliver weapons of mass destruction.

Today, the participants in the New Forum have common policies with respect to their trade to the four pariah countries in arms and arms-related technologies, as well as sensitive dual-use items for military end uses. So we are already cooperating in responding to these dangers. The participants in the New Forum discussions went forward and agreed that the New Forum should prevent the acquisition of armaments and sensitive dual-use items for military end-uses if the behavior of a state is, or becomes, a cause for serious concern.

For the future, we need to guard against destabilizing conventional arms buildups, and to do this we will with our partners:

- Share intelligence on global trends and threats to peace and stability;
- Consult closely when we see dangers arising;
- Provide information on our trade in arms and sensitive dual-use goods and technologies to countries in regions of conflict;
- Define common approaches to these, including, as appropriate, policies of restraint.

The New Forum will not, however, be directed against any state or group of states; impede bona fide civil transactions; nor interfere with the rights of states to acquire legitimate means with which to defend themselves.

With the disintegration of the Soviet Union and the attendant end of the Cold War, we and our allies concluded that COCOM's strategic rationale was no longer tenable—nor were the procedures and controls that had been associated with it. As a result, the New Forum will be based on national controls; in the current strategic environment, vetoes are things of the past.

But the end of COCOM has not meant the end of controls. Rather than sweeping away the COCOM arrangement, we decided there were good reasons for an orderly

transition in which the arrangement would be closed down with care and a new regime established to respond to the new security threats. In the phasing out of COCOM we have put in place interim guidance for American exporters concerning areas where there will be liberalized treatment, and those areas, which because of their military sensitivity, will continue to be subject to careful national control. We have also negotiated common understandings with our partners about those areas which should continue to be treated with extreme vigilance.

Russia and the Visegrad-4 countries joined our efforts, having met the agreed membership criteria: adequate export controls, adherence to the major nonproliferation regimes, and responsible export policies toward the pariah countries. Of particular note is Russia's agreement to end its arms transfers to Iran.

In addition to including Russia and the states of Central Europe, the New Forum will be open, on a global and nondiscriminatory basis, to other states that comply with the agreed criteria. There is already a line forming of countries which seek to join, including Argentina, South Korea, Romania, Bulgaria, and Ukraine. This is a strong sign that, even before the regime has been established, this new item on our nonproliferation agenda is on course.

Export Controls and Proliferation

Many other countries wish to join the new regime, and one benefit of our work is that these new members, to meet the membership criteria, are taking steps to bring their national controls into line with the agreed membership criteria of responsible national transfer policies, adherence to nonproliferation norms and a commitment to effective export controls. This has advanced both U.S. security and our larger effort against the proliferation of weapons of mass destruction, as it has increased international support for the measures we use to fight proliferation. These include:

- Erecting global norms, such as the Nuclear Nonproliferation Treaty, the Chemical Weapons Convention and the Biological Weapons Convention, that put WMD "off limits" and provide an international basis for our other efforts;
- Participating in multilateral regimes, to facilitate cooperation among like-minded countries;
- Maintaining our military capabilities to deter and defend against the use of WMD;
- Taking action to stop transactions of proliferation concern;
- Implementing U.S. sanctions legislation; and
- Setting the right example, by unilaterally destroying our BW stockpile 6 years before the BWC entered into force, and undertaking deep cuts in our nuclear forces.

This broad panoply of measures has permitted us to stop some foreign programs of proliferation concern while slowing and complicating others. The result is a lesser threat to U.S. forces and more time for us to address the fundamental security concerns that underlie countries' pursuit of WMD.

Export controls remain an essential element of our nonproliferation effort. They help ensure that U.S. citizens, industry, and territory are not used to support military, especially WMD, programs that threaten U.S. interests. They delay programs of concern and make those programs more costly and less effective. Export controls permit us to support activities of important military and economic benefit to the U.S. while managing the risk that our support might be diverted to proliferation uses.

All of the benefits of export controls are magnified when they are multilateral, and the U.S. has had success in persuading other significant potential suppliers to adopt similar nonproliferation export controls. In addition to the 25 MTCR, 29 Australia Group, and 31 NSG countries, we have convinced a number of major producers in Europe, Asia, and Latin America to abide by regime controls. The New Forum accelerates this trend with its requirement that members unilaterally apply nonproliferation controls, and we and our partners have a very active outreach program, combined with important assistance programs to help countries, including Russia, in developing the effective export controls.

Even the Enhanced Proliferation Control Initiative "catch-all" control—started in 1991 as a unilateral U.S. control—is now shared by a majority of our regime partners, including all European Union countries. But we will continue to require the ability to impose a few unilateral controls when our national interests dictate.

S.2203

Controls on dual-use exports are a fundamental part of our nonproliferation effort. Mr. Chairman, you have also asked me to provide the Department's views on the Export Administration and Enhancement Act of 1994 (S.2203) marked up by the Banking Committee in the 103rd Congress.

In general, the Administration supported passage of S. 2203, as it provided many of the export control authorities requested by the Administration. It is essential that any new export administration act provide the Executive with the authorities and flexibility to address a complex and evolving mix of nonproliferation, security, foreign policy, and economic goals. I'd like to comment on some of our principal concerns with S. 2203.

We would oppose those sections of S. 2203 which direct the Secretary of State to seek specific objectives in multilateral regime negotiations, such as the creation of secretariats or pre-consultation on export licenses. These are not appropriate for the multilateral arrangements which could fall within the Act's definition of regime. Such efforts would be counterproductive and undermine our credibility. In addition, we oppose statutory presumptions of approval and disapproval, which could result in export control policies that differ from multilateral regime standards.

S. 2203 established a procedure for commodity jurisdiction review with problematic deadlines and other restrictions which would limit the President's ability to resolve jurisdictional disputes. We share the general goals of S. 2203 for commodity jurisdiction, and we are currently addressing the issue within the Administration. We expect to present soon a new procedure which will provide adequate timelines for decisionmaking, greater transparency and a clear escalation process for dispute resolution.

S. 2203 did not provide authority to regulate proliferant activities unrelated to exports, such as financing proliferant activities in a foreign country. The U.S. would be forced to rely on the International Emergency Economic Powers Act to control such conduct. S. 2203 also established unacceptable limitations on the President's authority to use IEEPA to continue export regulations.

The time constraints in S. 2203 on the conduct of prelicense checks would limit the effectiveness of the prelicense check program and could restrict the Administration's ability to make informed licensing decisions.

The Administration opposes codification of Executive branch administrative procedures beyond that provided for in the Administration's proposal of last year. License review provisions are being revised by the Administration and will be set forth in an Executive Order.

Mr. Chairman, as I noted earlier, the Administration generally supported passage of S. 2203, as it provided many of the export control authorities requested by the Administration. We have previously provided comments to the Banking Committee on various aspects of S. 2203. I have touched upon a few, but I would be glad to answer any questions you may have on this bill, on our nonproliferation efforts or on the work to establish a successor regime to COCOM.

PREPARED STATEMENT OF DAVID S. TARBELL

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U.S. DEPARTMENT OF DEFENSE, WASHINGTON, DC

SEPTEMBER 21, 1995

Thank you, Mr. Chairman, for the opportunity to testify on the topic of export controls. You have asked particularly about progress in negotiating a successor regime to COCOM and about how export controls can address the new security threat posed by the proliferation of weapons of mass destruction. Overall, DoD's export control efforts are under the purview of the Under Secretary of Defense for Policy. The Deputy Assistant Secretary of Defense for Counterproliferation Policy is responsible for direct oversight of this program, which is managed on a day-to-day basis by the Defense Technology Security Administration (DTSA). These issues are subjects of major concern to the office of the Under Secretary of Defense for Policy, as well as to other offices in DoD.

My presentation has three parts. First, I will outline the type of Export Administration Act (EAA) that we would like to see emerge from Congress. Second, I will explain the national security framework that defines DoD's approach to export controls. Third, I will describe DoD's interest in the COCOM successor regime. The successful establishment of that regime is critical to our national security and regional defense goals. Of course, I am also prepared to address questions on other subjects of interest to the Subcommittee.

First, let me discuss the EAA. I wish to begin by stating that, in my judgment, the export controls program continues to operate effectively under the International Emergency Economic Powers Act (IEEPA). Because the EAA was not extended or reauthorized, it was essential to our national security that we continue to have a



basis to control exports of dual-use technologies. Thus, under the authority of IEEPA, the President renewed this year by Executive Order his direction that the provisions of the EAA and the Export Administration Regulations continue to be followed.

In its letter of invitation the Committee asked for the Department's views on S.2203, proposed during the 103rd Congress. Let me address this by outlining the type of EAA bill the Defense Department would like to see emerge from Congress. First, the Department believes that the export control process must be disciplined and must reflect an equal partnership among the agencies and departments with expertise in this area. At the same time, the EAA should preserve the President's flexibility by providing him with broad authority to adjust controls consistent with world developments and to organize the Executive Branch process for implementing the authorities in the EAA. If it is important from a national security, foreign policy, or nonproliferation standpoint to deny an export, the Government should have the power to do so. The Administration's proposal sent last year to Congress embodies these principles and is wholeheartedly supported by my Department. As part of the Administration's export control team, we look forward to working with the Senate Banking Committee to fashion a new EAA.

Let me now describe how the Department of Defense approaches export controls as a part of our overall national security policy. This will help you understand the concerns we wish to see addressed in a new EAA. DoD continues to believe that export controls are a very important tool of U.S. national security policy. They help to reduce the likelihood of military conflicts by limiting the spread of destabilizing arms or dual-use technologies. As well, I wish to emphasize particularly that judicious but decisive use of export controls aimed at chokepoint items and technologies can slow or stop the spread of weapons of mass destruction and their means of delivery.

We face a new situation with the end of the Cold War and the growing worldwide diffusion of technology, which has required that we make adjustments in the scope and focus of our export controls. There are new indigenous capabilities outside the United States and increased economic pressures throughout the industrial world to increase exports.

As part of the Administration's nonproliferation and export control strategy, DoD established the Counterproliferation Initiative. Nuclear, biological, and chemical weapons—sometimes referred to collectively as weapons of mass destruction (WMD)—are no longer a hypothetical threat in regional conflicts. Programs to develop or acquire WMD and their means of delivery are widespread around the world. For the DoD to be able to fulfill its responsibilities in this new era and to reshape our forces for the new world, we must take seriously the WMD threat in future conflicts. The United States must be able to deter, and if necessary prevail with conventional forces, even if a regional aggressor threatens or uses WMD. The U.S. also must be prepared to counter the use of advanced conventional weapons that may be obtained by hostile states.

This is the purpose of the Counterproliferation Initiative. Indeed, in our concept, counterproliferation equals prevention plus protection, and export controls play a central role in the prevention part of this equation.

Our export control policy has two objectives. First, we want to stop the transfer to potential adversaries or combatants of technology that is not in our national security and defense interests. Second, we want to monitor technology flows that are acceptable in themselves but that need to be tracked to prevent diversion and to ensure that we know what military capabilities our forces might face in any given region.

The Department of Defense is convinced that export controls on key dual-use items are critical for protecting our military advantages. When we evaluate the need for export controls, we are guided by how an item or technology is used in U.S. military systems and by what contribution it could make to the capabilities of potential adversaries.

It is important to recognize that we do not control for control's sake. Our controls must be effective to be worth the cost. Moreover, with the increasing pace of technological change and the growing diffusion of technology (especially in our information age), there inevitably will be increased foreign availability. This situation requires that we be careful not to put U.S. exporters at an unnecessary competitive disadvantage, particularly when export revenues are an important contribution to profitability and to financing defense-related R&D, and hence help to sustain the defense industrial base.

Because of growing foreign availability and indigenous production in many proliferant states, however, we focus our export control efforts on chokepoint items and/or technologies that are critical to developing and deploying military capabili-

ties. By focusing our controls more tightly, we can make the acquisition of WMD and their means of delivery as well as conventional arms and associated dual-use technologies much more difficult. At the same time, we can track ongoing transfers so that we will have a better sense of the capabilities of potential adversaries in any future Desert Storm. This is why a forceful program of export controls aimed at selected items and technologies is a core element in our Counterproliferation Initiative.

An important element of our export control strategy is to work with our allies and friends to harmonize policies for the control of arms and dual-use technologies. Under Secretary of State Davis will address the overall objectives of the COCOM successor regime, the status of negotiations, and the results of the High Level Meeting that was held last week. I would like to address some of DoD's interests in ensuring a robust and meaningful regime. DoD has been playing a central role in this effort, with particular emphasis on using our military and technical expertise in the development of meaningful control lists and in helping to devise an organizational structure that will allow the new regime to meet the new security challenges of the post-Cold War era.

The regime is to have two pillars: arms and sensitive dual-use technologies. DoD has been pressing hard for a regime that involves serious information exchange and scope for consultation. Member countries will do their own licensing without sending cases to a central clearinghouse, but they will establish a policy framework for review of items on agreed control lists. Information exchange will be essential to ensure that national policies are being implemented consistently within the agreed framework.

For several years, the United States has been working closely with our allies to implement an export control system that is adaptable and effective in seeking to ensure that arms and sensitive dual-use technologies that have critical military applications are not exported or diverted to potential adversaries or states that threaten the stability of key regions. We are particularly concerned that we prevent militarily useful exports to proliferant states—such as Iran, Iraq, Libya, and North Korea. The new regime also will promote greater responsibility in the transfer of armaments and sensitive dual-use technologies to regions of instability such as the Middle East and South Asia (India/Pakistan). DoD officials participate regularly in the multinational meetings that are working to develop the procedures and control lists for the new regime.

Admission to the post-COCOM regime requires states to meet specific criteria and to endorse certain principles. Most important, members must maintain national export controls adequate to ensure their ability to prevent destabilizing transfers; they must be members in good standing of the nonproliferation regimes; and as a condition of membership they must agree to adopt responsible export policies regarding states of serious concern, such as Iran. The COCOM successor regime by its focus on general dual-use technology and conventional arms will complement the existing control regimes that are concerned with nonproliferation. These include the Missile Technology Control Regime (MTCR), the Australia Group, and the Nuclear Suppliers Group.

Negotiations for the COCOM successor regime have proceeded slowly at times. But the supplier states are close to final agreement on a new, multilateral institution to promote responsible policies for the export of weapons and dual-use technologies. This will close a gap in the international security and nonproliferation system, as well as help to ensure that U.S. exporters will face a level playing field.

In sum, in the new, post-Cold War world, the Administration and DoD are giving strong emphasis to preventing the proliferation of dangerous military capabilities. We also are intent on using multilateral controls to the maximum extent possible in order to ensure that controls are effective and to avoid putting U.S. exporters at a competitive disadvantage. DoD's export control policies are intended to achieve these objectives. I believe we are succeeding.

Mr. Chairman, this concludes my formal statement. I would be happy to answer any questions that you or the other Committee members might have.



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